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April 23, 2025

VIA ECF

Magistrate Judge Peggy Kuo
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Gutama v. Whitestone Air Inc. et al
Eastern District Case No.: 23-cv-02802-ENV-PK

Dear Magistrate Kuo:

This office represents the Plaintiff in the above-referenced matter. We respectfully submit this letter in response to the Order today by Judge Vitaliano referring Defendants' motion to vacate the default judgment for a report and recommendation regarding same to be issued by Your Honor.

Initially, we note that the Order to Show Cause filed by Defendants on March 17, 2025 (*ECF No. 25*) was never signed by the Court and, as a result, Plaintiff never had an opportunity to address same, including filing opposition papers to Defendants' proposed motion. Notably, on the same date that the Order to Show Cause was filed, Plaintiff wrote to the Court requesting that any proposed temporary injunction be denied because there was no basis for issuing it without reviewing any opposition papers that Plaintiff would have submitted had he been permitted to do so pursuant to a scheduling order issued by the Court. *ECF No. 29*.

Critically, in the letter filed with the Court, Plaintiff also outlined certain arguments that would be made in opposition to any motion to vacate the default, including, but not limited to the fact that, (a) Defendants were served at their address, which is also the registered business address for the corporate defendants; (b) Defendants were on notice of the filing of the Complaint prior to the issuance of any default as Defendant Kristina Biscardi contacted Plaintiff's counsel on September 7, 2023 and October 5, 2023 to discuss the case and Plaintiff's relationship with her – after the litigation was filed but before the default motion was filed; (c) Defendants had their own counsel, Elio Forcina, Esq., reach out to Plaintiff's counsel about the litigation where Plaintiff's counsel repeatedly advised Attorney Forcina in July 2024 that he would be moving forward with the default judgment; and (d) Plaintiff was a W-2 employee of Defendants as he was issued W-2s and payroll checks during his employment from Defendants. *ECF No. 29*.

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Accordingly, Plaintiff clearly has evidence that would defeat the proposed motion to vacate the default judgment by Defendants, which, in fact, may also demonstrate that Defendant Konstantina Biscardi possibly committed perjury in her Declaration, including that Plaintiff was an “independent contractor who we paid as a 1099.” *ECF No. 27, ¶12*. Plaintiff has documentation undermining this position, including the W-2s and payroll checks issued by Defendants to Plaintiff as alluded to in our March 17, 2025 letter. *ECF No. 29*.

Finally, it must be noted that eleven days after the Order to Show Cause was filed, Defendants’ counsel filed a motion to withdraw as their counsel because the check that Defendants issued to him bounced. *ECF No. 31*. The hearing for that motion was scheduled for today at 11:00 a.m. (Plaintiff took no position on Defendants’ counsel’s motion) and we have not yet been updated as to the status of the hearing. Based on Defendants’ counsel’s motion to withdraw, we also believed that this may dispense of the motion to vacate since Defendants were no longer represented by counsel, including the corporate defendant Whitestone Air Inc.

In sum, based on the Court’s Order issued today referring the motion to vacate the default judgment to Your Honor for a report and recommendation, Plaintiff respectfully requests that he be permitted to submit opposition to the motion to demonstrate, *inter alia*, that Defendants had knowledge of the action prior to the issuance of the submission of the default motion, demonstrating that their default was willful, and that they do not have meritorious defenses to the claims asserted by Plaintiff.

Should the Court require any additional information regarding this request, we will readily provide same. Thank you for your time and courtesies.

Respectfully submitted,
Law Offices of Yale Pollack, P.C.

/s/ Yale Pollack
Yale Pollack, Esq.

cc: All Counsel (via ECF)